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January 29, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-262

Dear Mr. Caton:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom) are an original and 16 copies of its comments in response to the Commission's December 24, 1996 Notice of Proposed Rulemaking on Access Charge Reform, in the above-referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Access Charge Reform	)	CC DOC 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

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COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS or TDS Telecom), by its attorneys, submits these comments in response to the Notice of Proposed Rulemaking in the first above-captioned proceeding.[1] TDS Telecom owns 105 incumbent local exchange carriers (LECs or ILECs) serving in 28 states. The TDS LECs serve primarily rural markets and are all within the definition of "rural telephone company" (RLEC) in the Telecommunications Act of 1996.[2] All

[1]In the Matter of Access charge Reform, Notice of Proposed Rulemaking, CC Docket No. 96-262 (NPRM), included in Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry (released December 24, 1996).

[2] Pub. Law. 104-104, 110 Stat. 56 (1996 Act), to be codified at 47 U.S.C. §§151 et seq. Citations Act refer to that Act as it will be codified. The RLEC definition is at 47 U.S.C. §153(37).

also remain under rate of return (ROR) regulation because the Commission has not developed a price cap or other incentive regulation option that can accommodate the wide variance among ROR LECs or even among the TDS Telecom LECs.[3] Even though the NPRM purports to affect ROR LECs in only a few circumscribed ways, TDS Telecom views it as a proceeding that will (a) set the stage, perhaps irreversibly, for how the Commission will eventually treat "deferred" ROR access charge issues and (b) may influence or collide with other pending telecommunications issues that will profoundly affect ROR LECs.

These comments will deal primarily with three categories of proposed changes -- (1) changes the Commission intends to apply to ROR LECs, (2) changes that should be available as an option for ROR LECs and the NECA pools and (3) changes that TDS Telecom believes are likely to foreclose, impede or complicate the ultimate emergence of a comprehensive, coherent new operating environment consistent with the 1996 Act's commitments to advancing rural and urban telecommunications capabilities.

I. SUMMARY

The Commission must consider the impact on rate-of-return LECs of proposals to modify access charges for price-caps LECs. The most unfair result -- virtually impossible to avoid — would be to "defer" consideration for rate-of-return LECs, ignore the impact of its proposals on such LECs, but make decisions that will subsequently be extended to all incumbent LECs. Rate-of-return companies rely especially heavily on interstate access revenues to provide high

[3] Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order; CC Docket No. 87-313, 5 FCC Rcd 6786, 6819-20 (1990) (LEC Price Cap Order).

quality universally available service, up to 93% for the most access-dependent TDS LEC, to provide universally available, modern service. But, market pressures in the new competitive environment will not spare rate-of-return LECs from the effects of competition or customer demands to match price cap access reforms. Some will have to provide unbundled elements. All are vulnerable to cream-skimming caused by perverse incentives owing to flaws in today's access charges and the growing disparity in rural and urban access charges. ROR LECs must have enough flexibility in time to meet competition, regardless of the Commission's decision to put off access reform for them. Rate of return LECs have faced the same pervasive regulation and radical change in ground rules as other incumbents. They cannot lawfully be denied recovery of their historic costs, and they must be part of an embedded cost recovery mechanism at the earliest possible time.

The Commission should continue to impose sufficient access charges on interexchange carriers to recover for the availability of a ubiquitous distribution network. Unbundled element prices do not recover the full cost of what LECs provide that allows other carriers to rely on unbundled elements or resale in the first place, necessarily relying upon facilities-based incumbents' nationwide availability and back up role. More efficient (i.e. flat-rated or bulk-billed) recovery of carrier common line costs from interexchange carriers is desirable, but those carriers may not pass their flat-rated or bulk-billed charges through to end users on a deaveraged basis under section 254(g). Deaveraging SLCs would also conflict with the Act's commitment to "reasonably comparable" rural and urban rates and services. It would also violate that principle to uncap SLCs for non-primary residence, second residential and all multiline business

connections, since the law authorizes no such exceptions. Charging full high cost area SLCs for these lines would impede Internet connections and handicap rural businesses and institutions. Trying to reprice all lines to reflect differences in costs actually incurred for first and subsequent lines would further complicate the already impractical and administratively unworkable proposal to limit the connections eligible for high cost support. The Commission should also refrain from imposing multiple SLC charges on ISDN, since that service uses the loop more efficiently and does not increase the cost by anything like the 100% per additional derived channel that multiple SLCs presume.

The Commission cannot lawfully phase out legitimate costs now recovered in the TIC. It should, instead, shift those costs into more appropriate charges, as NECA explains. The $93 million NECA says cannot be shifted without separations reform should be collected under Part 69 until an effective alternative cost recovery plan is adopted. All access reform proposals for ROR LECs must meet a cost-benefit test.

The Commission is aware that access, universal service, interconnection and separations rules are "intensely related," as its Chairman has stated. It must coordinate all of these policies and quantify the cumulative results under the universal service principles, as well as the 1996 Act's other primary goals: more competition and less government micromanagement through regulation. Congress did not intend the 1996 Act to cause significant rate increases. Hence, it is not enough to provide unsupported assurances that whatever support mechanism may emerge from the Joint Board and be adequately validated for <u>all</u> incumbents will, in fact, generate "sufficient" support and make "explicit" a proper level of replacement for existing "implicit"

support. Such assurances are premature, given the untested cost methodology that the Joint Board has recommended before one that works has even been designed. There is no record support for assuming that NECA pool rates are high or for simplistically subtracting new or existing support from interstate revenue requirements to prevent hypothetical "double recovery." The Commission must coordinate all inter-related proceedings, including its separations adjustments, and tailor an integrated, comprehensive implementation package suitable for ROR and price cap LECs.

Finally, insofar as the proposed "market" and "prescriptive" approaches are concerned, both add regulation and reflect mistrust of competition and marketplace workings instead of the balanced blend of universal service, genuine competition and deregulatory reforms the Act ordains. The Commission should not tell the marketplace what to do or how to do it, let alone regulate competitors into a market position that pleases the government. It should let carrier-initiated prices and competitive responses shape the new marketplace.

II. PRICE CAP ACCESS CHARGE ISSUES CANNOT REASONABLY BE RESOLVED WITHOUT CONSIDERATION OF THE EFFECTS ON RATE OF RETURN LECS AND OTHER UNAVOIDABLY LINKED ISSUES

The Commission states (¶¶ 50-52) that this proceeding will apply only to price cap ILECs, with a few express exceptions. It may (¶¶ 57-67) apply its Carrier Common Line (CCL) and Subscriber Line Charge (SLC) rate structure to ROR LECs. It proposes (¶¶86-88) to apply its Transport proposals, including modifications to the Transport Interconnection Charge (TIC), to both price cap and ROR LECs. And it proposes (¶ 246) to use any support obtained from the federal universal service mechanism to offset interstate allocated costs of the recipient LEC. The

NPRM also discloses the Commission's intention (¶52) to begin a proceeding in the near future to explore what changes in the jurisdictional separations rules are appropriate in the wake of the 1996 Act.

Unfortunately, there are a number of reasons why a tidy division of most of the access charge issues into, in essence, a large LEC and a small LEC access reform proceeding will be fraught with difficulty. Nor can access charge issues be resolved in isolation from closely linked issues, including both the other components of the implementation "trilogy" -- replacing universal service implementation mechanisms and applying the statute's interconnection provisions -- and adjusting jurisdictional separations to fit the 1996 Act's new national telecommunication's blueprint.

The Commission is determined to resolve a broad range of issues for price cap LECs before its first deadline for implementing the universal service provisions. Consequently, the Commission must be careful not to deliberately ignore the needs and differences that set ROR LECs apart under the fiction (see, e.g., ¶52) that it can start afresh with those issues later this year. It will be unable to avoid deciding issues here that will ultimately control access arrangements for the whole ILEC industry. The confusion and uncertainty of the implementation process cries out for a comprehensive and harmonious policy package tailored to the vulnerable markets served by ROR LECs, that will include access, universal service, interconnection and separations components. Only such an integrated, rural-specific answer can build on the 1996 Act's blueprint for new national policy that adequately respects the needs and differences that set rural areas apart.

A. Price Cap Access Charge Policies Will Unavoidably Prejudge or Even Predetermine the Access Charge Policies for ROR LECs Supposedly Excluded from Round One of Comprehensive Access Reform

Chairman Hundt recently characterized the implementation issues involved in the many, complicated and unsynchronized implementation proceedings spawned by the 1996 Act as "intensely interwoven."[4] The phrase captures the extraordinary complexity involved in implementing dramatic changes in telecommunications policy. The Joint Board has wisely "bifurcated" its universal service schedule for resolving urban and rural issues.[5] That step could help gain the Commission time to shape rural universal service policies with all pieces of the policy puzzle before it at once. That schedule could, for example, allow for some insight into the scope and direction of the separations review the Chairman has said[6] will commence in late February.

To take advantage of the opportunity to craft integrated rural policy, however, the Commission must avoid making hasty determinations in this "price-cap-LECs-only" proceeding that it will be hard pressed not to apply to ROR LEC markets when it gets around to its ROR access charge proceeding in 1997 (¶52). The Commission must carefully inform itself in this proceeding on how both (a) changes in specific access charge policies proposed for all

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[4] Speech to the Competitive Policy Institute on January 14, 1996, p. 4 (Hundt CPI speech).

[5] Federal-State Joint Board on Universal Service. cc Docket No. 96-45, Recommended Decision, FCC 96J-3 (released Nov. 8, 1996) (JB Recommendation).

[6] Hundt CPI Speech at 5.

incumbents and (b) its broader exploration of how to shape access arrangements using market forces, regulatory fiats or alternative approaches will translate into ROR LEC access policy in harmony with the universal service provisions of the new law. The worst and least principled result in this proceeding would be to promise separate evaluation of ROR LEC access issues, but instead predetermine questions of crucial importance for rural markets without paying attention to rural market characteristics and exigencies. That scenario would leave ROR LECs fighting an uphill battle for "exceptions" or "changes" from the general access charge approach. Hence, the danger of prejudgment compels TDS Telecom to comment even on some price cap access proposals that do not purport to apply to rural LECs.

B. Access Charge Revenues Are of Crucial Importance to ROR LECs

The effect of access charge changes on ROR LECs, such as the TDS Telecom companies, is likely to be disproportionately severe in comparison with price cap LECs. Traditional regulatory policy has made use of interstate access charges to recover a significant share of RLECs' costs of service, including some that must now be recognized under the 1996 Act as "implicit" universal service support and thus must be made explicit as the Act requires.

The TDS LECs, for example receive an average of 55% of their revenues from total access charges, with individual LEC proportions that range up to 93%. With so much at stake, it should not be surprising that TDS Telecom LECs and similar rural systems are dismayed by the prospect of doing without access charge flexibility made available to nearby large companies and are not reassured by the suspicion that they will face hand-me-down price cap access charge access rules at the close of their "deferred" ROR access reform proceeding.

ROR LECs do not operate in isolation, even though they confront unique challenges. There is already a severe problem for NECA traffic sensitive pool participants owing to the growing gap between nonpooling, generally price-cap-regulated LECs' traffic sensitive access charges and the significantly higher NECA traffic sensitive charges. For example, TDS Telecom's Winterhaven Telephone Company in California has recently had to prepare to withdraw from the NECA traffic sensitive tariff. The NECA rates Winterhaven was required to charge itself for service to its customers' closest community of interest, located across the Arizona border, would otherwise stand in the way of service at rate levels acceptable to its customers as "just, reasonable and affordable." The Joint Board's recommendations for freezing universal service support for RLECs at historic, already out-of-date levels during a transition to a yet-to-be-developed proxy cost model[7] cannot inspire confidence that universal service support will become available to replace revenue reductions from access charge reform. In addition, in decoupling CCL access charges from the national average levels formerly maintained through Long Term Support (LTS), the freeze threatens further upward pressure on ROR LECs' access charges. Allowing, or perhaps even requiring, deaveraged access charges for price cap LECs (see, e.g., ¶¶63, 113, 121, 180-186) will exacerbate the growing rural access charge disparity crisis. To assume that nonprice cap ILECs will not face marketplace pressures and do not need pricing flexibility is to blink reality.

C. Marketplace Forces Will Create the Need for Flexibility and Require Access Charge Responses in ROR LEC Areas

[7]JB Recommendation, ¶¶355-56.

Even if the Commission confines most of the access charge reforms proposed in the NPRM to price cap LECs, it must not forget that its price cap access charge changes will also expose ROR LECs to customer demand to replicate the access charge adjustments allowed for their price cap neighbors (see, ¶167). For instance, disproportionate access charges will place ROR LECs at a disadvantage both in keeping and attracting businesses and in attracting interexchange competitors to serve or remain in their rural communities, given the mandate in § 254 for geographically averaged interexchange rates.

The need for access flexibility will be most pronounced for ROR LECs that cease to qualify for the§251(f) interconnection exemption and become subject to the Act's provisions for "jump starting" successful competitive entry. If the Commission succeeds in defending its determination that the interconnection exemption was intended as a rare rural exception, the exposure to government-assisted competition will be extended to more ROR LECs.[8] The Commission should keep in mind the greater vulnerability of thin rural markets to creamskimming and loss of even the limited economies of scale and scope available in such markets. Even the prospect of competition in such markets can have a chilling effect on infrastructure investments, as Congress realized in adopting the rural market provisions aimed at ensuring that a transition to competition actually brings rural customers the benefits expected

[8]The Commission inconsistently persists in both its interconnection interpretation minimizing the rural exemption as only a rare exception and statements (e.g. ¶52) and in brushing off implementation impacts on rural LECs because "[m]any, if not all" may be exempt from interconnection.

from competition.[9]

The Commission has prudently realized that it is not ready to determine the optimal access charge approach for ROR LECs. Yet it has also acknowledged (¶¶41-45) that the past access paradigm creates perverse incentives for uneconomic entry and may frustrate the legislation's purposes. In short, ROR LECs' markets are not immune to the problems the NPRM seeks to remedy for price cap LECs' markets. Indeed, small, high cost markets are least able to withstand errors in policy judgments. Accordingly, the Commission must avoid harmful side effects from its price cap determinations here from relegating ROR LECs that await customized, but deferred, access reforms to finding the ROR proceeding "a day late and [more than] a dollar short."

D. Some Option for Access Charge Relief Must Be Available to ROR LECs Prior to the Completion of the Separate Rulemaking Necessary to Develop Reformed Access Charge Rules for ROR LECs

To avoid creating new disincentives to serve or upgrade rural ROR LECs' service areas, the Commission should provide ROR LECs and the NECA pools the option of voluntarily becoming subject to at least some of the access charge rules the Commission proposes for price cap LECs -- without awaiting conclusion of the deferred ROR access charge proceeding. Greater

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[9] See §§214(e) (preserving state authority to limit carriers eligible for universal service support in rural, but not urban, areas), 251 (f)(1)-(2)(RLEC exemption from §251(c) and, consequently, §252), 253(b) (state public interest authority preserved), 253(f) (preserving state authority to limit rural competitors to universal service providers), 254 (universal service requires "sufficient" support to keep rural and urban rates and services reasonably comparable and to advance rural telecommunications and information opportunities) and 259 (allowing universal service providers lacking economies of scale or scope to share infrastructure with ILECs).

freedom to introduce new services (see, ¶¶309-310) would obviously benefit ROR LEC customers. Responding to competitors' bids to their customers is a competitive necessity that ROR LECs may need at any time. Moreover, in view of the special circumstances of rural LECs that made it inappropriate to mandate price cap regulation for small and midsized LECs,[10] submitting to price cap regulation and exiting the NECA pools to obtain flexibility is an alternative that would not serve rural interests well. Consequently, ROR LECs confronting competition should have the option to adopt the access charge reform flexibility developed for price cap LECs without converting to price caps regulation.

E. The Commission Should Include ROR LECs in Developing Recovery Mechanisms for ILECs' Historic Costs

The NPRM proposes (¶¶247-270) to explore the need to, and workable methods to enable incumbent LECs to recover costs which the new regulatory framework, the Commission's and states' implementation of the transition to competition and traditional public utility constraints on capital recovery will otherwise have placed beyond recovery. This proposal represents significant progress. Chairman Hundt heralded the Commission's new willingness to tackle this important issue in his January 14, 1997 speech,[11] and the NPRM (see, ¶¶248, 256, 262, 265) starts the process towards a method that would achieve lawful recovery under either a "market" or a "prescriptive" approach.[12]

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[10]LEC Price Caps Order, ¶¶257-65.

[11]Hundt CPI speech at 2-3.

[12] The NPRM (e.g., ¶¶143, 261) seems less inclined toward embedded cost recovery under a "market" approach. However, the possibility that new marketplace opportunities under a

The NPRM does not propose to include ROR LECs in this determination. But there is no valid reason not to develop an embedded cost recovery mechanism for all incumbent LECs. All incumbent LECs have been subject to pervasive common carrier regulation as businesses "affected with a public interest" and have faced a combination of federal and state requirements imposed under the general rubric of public utility law. ILECs have generally been required to serve as the carrier of last resort, serve on reasonable demand without unreasonable preference or discrimination, maintain service until they have obtained government consent to end or diminish their service, submit to rate and rate of return regulation and obtain consent to construction plans and various types of transactions. Regulators have often controlled the rate at which ILECs could depreciate their property deployed to perform their common carrier duties. In return, the public utility paradigm provided the right to serve as the sole telephone provider in a geographic area and to charge rates targeted to recoup their costs of service, including a reasonable rate of return. This mutually binding arrangement, often administered through certification, represented a balanced package of rights and responsibilities grounded in a shared perception of the public interest. Within the boundaries of this relationship, ILECs have made investments that they would not have been willing to make in a purely competitive environment, relying on the century-old public utility assurance that they could set their rates to recover their prudently

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market approach will recover historic costs is mere speculation. Moreover, unlike the BOCs (see, ¶256), ROR LECs are not gaining new interexchange opportunities that may add to their revenues. In any event, the Commission should not require ILECs to cross-subsidize their embedded regulated service costs with competitive service revenues.

incurred costs.[13]

A series of changes, culminating in the 1996 Act, have brought the traditional regulatory model, sometimes dubbed a "social compact" or "social contract," to an end. The states have been deprived of most of their authority over competitive entry by section 253 of the new law. The statute and the Commission nevertheless continue to place regulatory -- and even new investment -- demands on ILECs, such as the obligation to provide number portability and dialing parity. These requirements come on the heels of Commission mandates for equal access, 800 data base deployment and numerous other large and small requirements that have forced the ILECs to incur costs to benefit the public -- or interexchange carriers and ILECs' competitors.

Competition and the change in the ground rules combine to throw ILECs' ability to recover historic actual costs into considerable doubt. The NPRM makes it clear (¶¶141-143), for example, that its goal is sharp reductions in access charges. The Commission is determined to move cost recovery from a historic or embedded, actual-cost-basis to a "forward-looking" "proxy" for the costs of a hypothetical network, using optimally efficient technology. This proposal has been reiterated in a range of contexts, including the interconnection pricing requirements in the competition decision, now before the Eighth Circuit Court of Appeals,[14] and as a measurement tool to calculate what high costs will receive universal service support. In this

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[13](¶257) The Commission should reject any notion (¶258) of getting the states to open questions about whether past investment was prudent when made. If embedded investments have not been challenged by now, it would be highly unjust to apply "20-20 hindsight" in a radically changed environment.

[14]Iowa Utilities Board et. al. v. FCC, Case No. 96-3321 (and consolidated cases), argued January 17, 1997 (8th Cir.).

proceeding, both the proposed "prescriptive" mandate and the indirect "market" mandate, which conditions pricing flexibility upon compliance with the Commission's interconnection policies,[15] again seek to force LEC costs and prices down.

The NPRM acknowledges (¶¶247-270) various ILEC claims to recovery of these historical costs as a matter of fairness and constitutional law. It seeks here to determine the existence and nature of a recovery right and to design a process for recovery if it finds recovery to be required. TDS Telecom strongly supports this Commission initiative. Price cap ILECs will continue to make compelling showings as to their recovery rights, as they have in the Eighth Circuit case.[16] TDS Telecom supports such showings and urges the Commission to design a mechanism to accomplish the legally required recovery. The same public utility compact and pervasive regulation and the same United States Constitution apply to both price cap and ROR LECs. The same forces are preventing recovery of the costs incurred under statutorily superseded legal arrangements. Accordingly, the Commission should design its embedded cost recovery relief to apply to all ILECs.

The recovery mechanism should replicate the recovery anticipated under the public utility paradigm. It should include, but cannot be limited to, unrecovered depreciation expenses. Finally, the mechanism should not be artificially limited (¶247 et seq.) to "interstate allocated"

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[15]¶163. Under the Commission's voluntary marketplace proposal, even the first stage -- Phase 1 or potential competition -- would require compliance with the equivalent of the Commission's Interconnection rules (including those that are currently stayed) before the grant of any flexibility to compete.

[16]E.g., Brief for Petitioners Regional Bell Companies and GTE, Case No. 96-3321, et. al.) (8th Cir.) pp. 43-48 (filed November 18, 1996).

costs. Congress preempted the states and prejudiced their plans for intrastate cost recovery. Separations are in flux. State and federal cooperation in a Federal-State Joint Board would be the most reasonable approach to solving the whole, interwoven problem of ILEC historic cost recovery.

III. RATE STRUCTURE CHANGES MUST BE WEIGHED BY IMPACTS ON SUBSCRIBERS, UNIVERSAL SERVICE AND COMPETITION, NOT JUST ON COMPETITORS

The NPRM (¶¶55-139) proposes to apply several rate structure modifications for its access charge rules to both price cap and ROR LECs. All the TDS Telecom LECs are currently participants in the NECA Carrier Common Line and Traffic Sensitive tariffs. NECA pool questions involve impacts on many varied ROR LECs. Thus, TDS Telecom suggests, first, that the Commission make adoption of any rate structure changes an option, but not a requirement, for the NECA pools. In addition, it is essential for the Commission to embody several central concepts and principles in its rate structure modifications. Accordingly, the Commission must (1) continue to apply the access charge rules to interstate interexchange providers, regardless of how they obtain access to an ILEC's local distribution network; (2) apply the Act's interexchange rate averaging and "reasonable comparability" requirements for rural and urban services and rates to prevent deaveraging of SLCs for all -- or even some -- classes of end user connections; and (3) continue LEC recovery of the Transport Interconnection Charge (TIC), which represents real costs that have been incurred by LECs, by shifting portions that can be shifted into other charges, and rejecting the unlawful notion of repudiating any part of these costs or referring any of the costs to the states for possible repudiation.

The Commission should also make sure that it evaluates rate structure issues under all three of the 1996 Act's fundamental purposes, which must include the universal service principles in section 254, as well as the goals of telecommunications competition and deregulation that the Commission holds in especially high esteem. As a result, the Commission's analysis of proposals for rate structure changes in its access charge rules shares with the NPRM as a whole an overly narrow focus on how competitors will fare.[17] Instead, the Commission should evaluate how the rate structure changes it proposes will affect consumers, universal service and sound, deregulatory competition.

A. Despite the Undeniable Need for a More Efficient CCL Recovery Method, Carrier Common Line Charges Recover Costs That Should Remain the Responsibility of Interexchange Carriers

1. Interexchange Carriers Should Not Unfairly Avoid Network Access Charge Responsibility By Buying Unbundled Network Elements

The Joint Board recommendation joined in by a majority of this Commission acknowledges that today's traffic sensitive CCL recovery does not properly reflect the way in which these costs are incurred.[18] The NPRM (¶¶41-47) also identifies this inefficiency as a problem this proceeding must remedy. TDS Telecom agrees that CCL recovery via bulk billing or a flat rate charge will better recoup these costs than usage-based charges, which do not correspond to the way in which these costs are incurred.

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[17]Indeed, it appears likely that the Commission views this proceeding as an opportunity to impose its interconnection purposes indirectly. See, e.g., ¶163 (imposing interconnection rules and theories as a precondition to price cap access reform) and ¶¶220-227.

[18]JB Recommendation at ¶¶775-76

However, TDS Telecom is concerned with the Commission's belief (¶48, 54) that interexchange carriers should be free to evade the CCL charge by taking "unbundled elements" under section 251(c)(3). Unbundled elements, by pulling out individual loops as if they were stand alone network components, leave uncovered a residual amount of the distribution network costs that are currently recovered in CCL charges. In other words the "whole" of the CCL cost recovery is not the sum of the government-imposed unbundled element "parts." So far the Commission has ignored implicit support now recovered in this charge, but the costs will not go away simply because the rules create unbundled elements that cover artificially restricted costs. Carriers that lease unbundled elements nevertheless enjoy the protection provided by the serving ILEC's carrier of last resort role. Congress has called for support that is "sufficient" and "explicit," but at this stage the universal service high cost mechanism is essentially back on the drawing board, and questions abound as to its explicitness and sufficiency.

Moreover, the interexchange carriers will rely on the ILECs' performance of their carrier of last resort functions even more completely if they try to substitute leased unbundled elements for the traditional access purchase or facilities-based self-provision models. The problem of facilities backing for ILEC-provided interconnections also comes up in the Act's provisions for partial resale networks that gain designation as eligible for universal service support. Section 214(e)(4) enacts a procedure for such a reseller to provide itself with the facilities it needs to be a true, stand-alone universal service provider if the facilities-based incumbent seeks to withdraw as a designated support recipient. Similarly, it takes more than unbundled elements to provide a genuine substitute for an ILECs distribution network. The unbundled element charges do not

compensate the ILEC for this responsibility that makes unbundled elements a possible choice for interexchange carriers in the first place. A fair share of the costs for this network availability should be paid by the interexchange carriers, especially since they are perhaps the foremost beneficiaries. Accordingly, whether the CCL charge is imposed as a flat rate or by bulk billing, any shortfall between the lease charge for unbundled elements and the access charge should continue to be assessed on all interexchange carriers that acquire access to the ubiquitous public switched network -- the most important input for their interexchange services -- in this new way.

2. Interexchange Carriers' Recovery of their Flat-Rated or Bulk-Billed Access Charges from End Users Must Comply with the Act's Rural and Urban Comparability Mandates

Interexchange carriers must be able to pass their flat-rated or bulk-billed charges through to their end-user customers, just as regulated LECs must be able to pass along the Universal Service fund levy.[19] However, the NPRM asks (¶63) whether the geographic averaging provision would prevent deaveraged recovery by interexchange carriers to reflect whatever deaveraging of access charges the Commission allows or requires.

The plain language of the geographic averaging provision answers this question unambiguously. Section 254(g) directs the Commission to make rules requiring that

> the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas ...[and]...that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to

[19]See, Comments of TDS Telecommunications Corporation and Century Telephone Enterprises, Inc., CC Docket No. 96-45, filed December 19, 1996, pp. 6-8.

its subscribers in any other State.

Charges passed through to the interexchange providers' end users are no different from any other charges in this regard. If the provider pays them on a deaveraged basis and includes them in its interexchange rates, the end user rates must nevertheless be averaged. If the provider recovers them through flat rated end user charges, the charges in high cost areas must meet the standard of being "no higher" than the charges in urban areas or another state.

Even if subsection 254(g) did not require this result, the requirement for "reasonably comparable" rural and urban services and rates would independently stand as a bar to deaveraged interexchange carrier charges to their end users to recoup their access charges. Thus, the Commission should not consider any CCL alternative that would contemplate higher end user charges in rural areas or higher cost states.

B. The Subscriber Line Charge Should Not Be Partially Deaveraged or Multiplied for More Efficient Line Use

1. The Commission Should Not Remove the SLC Cap for Additional Residence Lines or Multiline Business Connections

The basic universal service commitment to "reasonably comparable" rates and services in rural and urban areas would also preclude deaveraging SLCs to reflect rural and urban loop cost differentials (¶180). That legal test should also derail any proposal (¶¶64-67) to remove the cap on SLC charges for all but first lines to a primary residence and single line business connections.

For one thing, the Act does not limit the requirement for rural and urban comparability to selected customers or types of access lines. Deaveraging SLCs for additional residential lines could discourage connection to the Internet or other information providers, which is often

accomplished via a second residential line. It cannot be assumed that customers would continue to take lines subject to a full-cost SLC in a high cost rural area. The loss of additional lines would not remove the costs, which could raise rural CCL charges if the primary line cap remains in place. If TDS Telecom's LECs had to recover the full average interstate cost per line for each access line outside the favored classes, TDS estimates that, on average, a second line for a TDS Telecom LEC customer would require an uncapped SLC of $8.49. The individual TDS Telecom LECs' uncapped SLCs would range up to $28.16.

Beyond that, removing the cap from second lines, second residences and multiline business connections would be administratively difficult, for the same reasons that terminating high cost support for such lines would be an administrative nightmare.[20] In fact, removing the SLC cap for lines ineligible for support under the Joint Board's plan would call into question the conventional regulatory assumption that every access line incurs the same cost. As explained in the joint universal service comments TDS Telecom filed with Century, most of the cost for lines is incurred to install the first line.[21]

Trying to apportion the share of the SLC caused by the first and subsequent lines would further complicate the administration of a "reform" with dubious practical impact and clear legal problems. Moreover, the problem of determining the "full" uncapped SLC for additional lines in a NECA pool member's area would be impossible without new record keeping, data reporting

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[20] See Comments of TDS Telecommunications Corporation and Century Telephone Enterprises, Inc., CC Docket No. 96-35, filed January , 1997, pp.23-30.

[21] Id., at 25-26.